IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P.No.5182 of 2006
Date of Decision : April 30, 2007.

Amandeep Kaur .... Petitioner

Vs.

State of Punjab and others .... Respondents

CORAM : HON'BLE MR.JUSTICE J.S.KHEHAR.
HON'BLE MR.JUSTICE L.N.MITTAL.

* * *

Present : Mr.A.K.Garg, Advocate
for the petitioner.

Mr.Salil Sagar, Addl.A.G., Punjab
for respondents no.1 to 3.

Mr.Raman Mohinder, Advocate
for respondent no.4.

Mr.Ashok Jindal, Advocate
for respondent no.5.

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J.S.KHEHAR, J. (Oral) :

The petitioner was inducted into the service of the respondents as an Anganwari Worker by an order dated 25.04.2005. The relevant extract of the aforesaid order is being reproduced as hereunder :-

"Subject : for hand over job of Anganwari worker.

On the captioned subject Amandeep Kaur is given the job of Anganwari worker on purely temporary basis. Your service can be terminated on the following

ground :-

1. *In case of absent more than 15 days without sanction of leave.*
2. *On finding that the work and conduct of Anganwari worker is unsatisfactory.*

You will be given honorarium as fixed by the Govt. from time to time."

It is not a matter of dispute that consequent upon her appointment as Anganwari worker, she assumed her duties as such and continued to function in the aforesaid capacity at Village Meerpur.

The Gram Panchayat of Village Meerpur addressed a complaint dated 17.05.2005 to the Deputy Commissioner, Fatehgarh Sahib, alleging therein that the petitioner had been appointed in a secret manner without inviting applications from the General Public. Despite the submission of the aforesaid complaint, the Gram Panchayat, Meerpur withdrew the same subsequently, through a communication dated 15.07.2005, on the ground that the petitioner was daughter-in-law of Village Meerpur. The fact that the aforesaid complaint stood withdrawn by the Gram Panchayat, Meerpur, is also evident from the communication addressed by the Block Development and Panchayat Officer, to the Deputy Commissioner, Fatehgarh Sahib dated 20.07.2005 (Annexure P-6).

The petitioner was addressed a letter dated 03.03.2006 by the Child Development Officer, Sirhind requiring her to appear before District Programme Officer in connection with her appointment as Anganwari worker at Village Meerpur. A translated version of the aforesaid letter has been placed on the record of this case. The relevant part of the same is being extracted hereunder :-

"*To*

Smt.Gurmeet Kaur W/o Netar Singh

Subject : Regarding selection of Anganwari worker

Village Meerpur.

You are hereby required to present your aspect of case regarding your appointment before the Distt. Program Officer Patiala on 6-3-2006 at 10:00 AM.

This may be treated as urgent.

Sd/- Children Development Project Officer, Sirhind."

Learned counsel for the petitioner states that on the receipt of the aforesaid letter dated 03.03.2006, the petitioner appeared before the District Program Officer, Patiala, on 06.03.2006 at the appointed time.

It is the contention of the learned counsel for the petitioner that after attending the office of the District Program Officer, Patiala, on 06.03.2006, the petitioner received no further communication but the impugned order dated 17.03.2006 (Annexure P-9). The relevant extract of the impugned order is being reproduced hereunder :-

"As per the order of the Distt. Program Officer Patiala/Fatehgarh Sahib vide letter no.D/P/O/2006/318 dated 16-3-2006 the work handed over to Anganwari worker Amandeep Kaur W/o Amarpreet Singh is taken back and the Supervisor is directed to hand over the charge of Anganwari Centre Meerpur to a worker of nearby village and office be informed. Letter No.C/D/P/O/S/FGS/06/964-68 dated 17-3-2006."

The aforesaid office order dated 17-3-2006 is subject matter of challenge at the hands of the petitioner. The solitary contention of the petitioner is that the respondents, by passing the impugned order, adversely effected the civil rights of the petitioner but before doing so, the respondents neither issued a notice to the petitioner informing her of the

reasons on the basis of which her services were likely to be terminated nor afforded her the opportunity to respond to the same.

In order to controvert the contention of the learned counsel for the petitioner, learned counsel for the respondents have invited our attention to the joint written statement, filed on behalf of respondents no.1 to 3, wherein the following pleadings have been brought to our notice :-

> ***"5.*** *That para No.5 of the petition is admitted to the extent that the then Child Development and Project Officer of her own had collected the applications through the supervision in charge of the village Meerpur the merit list to the Block Samiti Sirhind for its approval. However there is nothing on record to show that the then Child Development and Project Officer ever made a formal request to the Sarpanch/Gram Panchayat or the concerned officials of the Rural Development and Panchayat Department to convene a meeting of the Gram Sabha to collect applications from eligible candidate as required under the departmental instructions governing the issue. The abstract of the instruction (No.1) attached herewith as Annexure R-3 for the kind perusal of the Hon'ble Court.*
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> *It is further submitted that there has to be a panel of minimum 3 candidates for one post of Anganwari worker unless it is certified by the Gram Panchayat that a minimum of*

these candidates have not applied despite proper publicity prior to the Gram Sabha Meeting. In fact the merit list prepared by the then Child Development and Project Officer was sent to the Block Samiti for consideration and approval contains the name of Smt. Gurminder Kaur W/o Ravinder Singh. It is submitted that it was only after Smt. Gurminder Kaur refused to join as an Anganwari worker the fresh applications were collect/collected by the CDPO Office directly without sending a formal request to the Gram Panchayat for convening a meeting of the Gram Sabha wherein the applications were supposed to be collected as per the departmental instructions governing the matter. As per the merit list prepared by the CDPO Office and sent to the Panchayat Samiti Sirhind two candidates namely Gurmit Kaur W/o Netar Singh and Amandeep Kaur W/o Amarjeet Singh (Petitioner) had applied for selection, whereas as per the norms prescribed by the departmental instructions stipulate there ought to be a minimum of 3 applications for one vacancy unless the Gram Panchayat certifies that despite appropriate publicity 3 or more candidates have not applied for selection. No such certificate exists in the available official

> *record. The CDPO office some how chose to include the name of Smt.Gurminder Kaur W/o Ravinder Singh in the merit list even though she had declined to join the post after selection earlier. The whole exercise seems to have been carried out to raise the number of candidates to three the minimum prescribed for the vacancy. It was not justifiable. It is further submitted that the petitioner was declared selected on the basis of above said merit list and appointed as an Anganwari worker, which is contrary to the departmental instruction."*

It is the vehement contention of the learned counsel for the respondents, on the basis of the aforesaid pleadings, that the action taken against the petitioner, was rightful inasmuch as her appointment as Anganwari Worker was totally a back door entry, without considering the claims of the General Public.

Having examined the matter in the totality of the circumstances noticed herein above, we are of the view that the petitioner was never informed the reasons, on the basis of which the impugned order dated 17.03.2006 (Annexure P-9) was passed. It was imperative for the respondents, before adversely effecting the civil rights of the petitioner, to communicate to her, the basis of passing of the impugned order and also to afford her an opportunity to present her case. It is wholly unjustified for the respondents, now to place on the record of this case, fresh grounds on the basis of which the impugned order is being justified. This action, at the hands of the respondents, is not acceptable in view of the decision rendered by the Apex Court in ***Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others*** reported as ***AIR 1978 SC***

851, wherein the Supreme Court had observed as under :-

> *".....when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in* ***Gordhandass Bhanji (AIR 1952 SC 16) (at p.18)*** *:*
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> > *"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*
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> *Orders are not like old wine becoming better as they grow older."*

In view of the above, we are satisfied that the impugned office order dated 17.03.2006 was passed without following the rules of natural justice. The same is liable to be set aside and is accordingly set aside.

Liberty is however granted to the respondents, if they are so advised, to pass a fresh order, in accordance with law. The petitioner shall also be entitled to all consequential benefits.

(J.S.KHEHAR)
JUDGE

April 30, 2007
monika

(L.N.MITTAL)
JUDGE